



## **DEPARTMENT OF THE INTERIOR**

### **Office of the Secretary**

**[FWS-HQ-FHC-2013-N044; FXFR13360900000-134-FF09F14000]**

### **National Environmental Policy Act: Implementing Procedures; Addition to Categorical Exclusions for U.S. Fish and Wildlife Service**

**AGENCY:** Department of the Interior.

**ACTION:** Notice; request for comments.

**SUMMARY:** This notice announces a proposed categorical exclusion under the National Environmental Policy Act (NEPA) for the U.S. Fish and Wildlife Service. The proposed categorical exclusion pertains to adding species to the injurious wildlife list under the Lacey Act. The addition of this categorical exclusion to the Department of the Interior's Departmental Manual will improve conservation activities by making the NEPA process for listing injurious species more efficient.

**DATES:** We will consider comments we receive on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** *Comment submission:* Send comments to Susan Jewell, by one of the following methods:

- *U.S. mail or hand delivery:* U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 700, Arlington, VA 22203; or
- *Email:* prevent\_invasives@fws.gov (emails must have “Categorical Exclusion” in the subject line).

*Document availability:* You may view the Departmental Manual at <http://elips.doi.gov/elips/>.

**FOR FURTHER INFORMATION CONTACT:** Susan Jewell, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Arlington, VA 22203; telephone 703–358–2416. If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at 800–877–8339.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

Under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*, NEPA), Federal agencies are required to consider the potential environmental impact of agency actions prior to implementation. Agencies are then generally required to prepare either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). However, when a Federal agency identifies classes of actions that under normal circumstances do not have a potentially significant environmental impact, either individually or cumulatively, Council on Environmental Quality (CEQ) regulations allow the agency to

establish a categorical exclusion and to bypass the completion of an EA or an EIS when undertaking those actions (40 CFR 1507.3(b); 40 CFR 1508.4). When appropriately established and applied, categorical exclusions serve a beneficial purpose. They allow Federal agencies to expedite the environmental review process for proposals that typically do not require more resource-intensive EAs or EISs (CEQ 2010).

The U.S. Fish and Wildlife Service (Service) has identified that it would be appropriate to provide for a categorical exclusion for the Federal action of adding species to the list of injurious wildlife under the Lacey Act (18 U.S.C. 42, as amended; the Act). The Act authorizes the Secretary of the Interior, as delegated to the Service, to prescribe by regulation those wild mammals, wild birds, fish, mollusks, crustaceans, amphibians, and reptiles, and the offspring or eggs of any of the aforementioned, that are injurious to human beings, or to the interests of agriculture, horticulture, or forestry, or to the wildlife or wildlife resources of the United States. The provisions of the Act regarding injurious species are intended to protect human health and welfare and the human and natural environments of the United States by identifying and reducing the threat posed by certain wildlife species. Listing these species as injurious under the Act subsequently prohibits the species from being imported into the United States or transported across State lines.

The listing of species as injurious is, as an agency action, subject to environmental review under NEPA procedures. The Service has generally prepared EAs for listing rules. A categorical exclusion would allow the Service to exercise its authority to protect human health and welfare, certain human environments, and trust resources from harm caused by injurious species more effectively and efficiently by precluding the need to conduct redundant environmental analyses.

In 2002, the Service used an existing departmental categorical exclusion (“Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case” (43 CFR 46.210(i)) in two listing actions. Upon further review, the Service believes that this is not the best description of why injurious species listings do not have a significant effect on the human environment. Therefore, the Service is pursuing the addition of a new categorical exclusion for the listing of injurious species under the Act.

### **Proposed Categorical Exclusion**

The Department of the Interior is proposing to add a categorical exclusion to the Department Manual at 516 DM 8.5 C, which covers “Permit and Regulatory Functions.” This section includes approved categorical exclusions that address, among other things, the issuance of regulations pertaining to wildlife. This proposed addition would provide for a categorical exclusion for only the regulatory action of listing species as injurious (that is, adding a species to the list). The regulatory listing action places the species on a prohibited list, which prohibits their importation into the United States and interstate transportation. Thus, the activities covered under the categorical exclusion are simply to keep species out of the country that are injurious or to prevent their spread across State lines.

The categorical exclusion would not cover, for example, control actions (such as constructing barriers) or eradication actions (such as applying pesticides). Any such

injurious species management measures conducted by any Federal agency would undergo appropriate NEPA analysis and documentation prior to implementation of the action. The categorical exclusion would also not cover the issuance of permits (available for individual specimens intended for zoological, educational, medical, or scientific use), which is already covered under an existing categorical exclusion (516 DM 8.5 C(1)). The categorical exclusion would not cover the removal of species from the injurious wildlife list under the Act.

Additionally, application of the proposed categorical exclusion would be subject to a review of extraordinary circumstances established in regulation by the Department of the Interior (see 50 CFR 46.215). Extraordinary circumstances would be subject to the factors or circumstances that would cause an otherwise categorically excludable action to require further analysis in an EA or EIS. Thus, notwithstanding the existence of this categorical exclusion, the Service would have to develop an EA or EIS if it found the extraordinary circumstances applied to the listing of a particular injurious species.

## **Analysis**

The intent of the proposed categorical exclusion is to more effectively protect the human and natural environments of the United States from injurious species by making the listing process under the Act more efficient. The following three justifications support the categorical exclusion:

**(1) Maintaining the environmental status quo.** The listing action preserves the environmental status quo. That is, these listings ensure that certain potential effects associated with introduction of species that have been found to be injurious do not occur.

In this way, injurious wildlife listings maintain the state of the affected environment into the future—the state of the environment prior to listing or potential introduction in the absence of a listing. Thus, prohibiting a nonindigenous injurious species from being introduced into an area in which it does not naturally occur cannot have a significant effect on the human environment.

Because the proposed categorical exclusion also serves to make the listing process under the Act more efficient, and the listing process is designed to limit undesirable environmental effects in the future, the categorical exclusion itself supports maintenance of the environmental status quo.

**(2) History of findings of no significant impact.** Every EA prepared for an injurious species listing under the Act since 1982 (the first rule promulgated after environmental-assessment guidance was established under NEPA) as part of a formal NEPA analysis has resulted in a finding of no significant impact (FONSI) without requiring mitigation measures, and, therefore, did not necessitate the preparation of an EIS.

The species listed for which an EA was prepared include the raccoon dog (*Nyctereutes procyonoides*, 1983), the Chinese mitten crab (genus *Eriocheir*, 1989), the brown treesnake (*Boiga irregularis*, 1990), the silver carp (*Hypophthalmichthys molitrix*, 2007), the black carp (*Mylopharyngodon piceus*, 2007), the largescale silver carp (*Mylopharyngodon piceus*, 2007), and four species of large constrictor snakes (Burmese python (*Python molurus*), Northern African python (*Python sebae*), Southern African python (*Python natalensis*), and yellow anaconda (*Eunectes notaeus*), 2012).

The issues addressed in the EAs that were prepared for these species include the biology of the species (countries of origin, native range, habitat requirements, and food species), introduction and dispersal pathways (how a species was transported), ecological impacts (including effects on native, threatened, and endangered species), human impacts (including effects on recreation and water quality), economic impacts (including industry and agriculture), and cumulative impacts. While these species, when present in a nonnative range, can have a significant effect on the environment, the regulatory action (listing) has no significant effect. That each EA resulted in a FONSI strongly suggests that subsequent listings will also have no significant environmental impacts.

**(3) Consistent with existing approved categorical exclusions.** A categorical exclusion for the injurious listing process is consistent with the Service's existing approved categorical exclusions. Categorical exclusions have been approved that address preventing the introduction of nonindigenous species. For example, research, inventory, and information activities directly related to the conservation of fish and wildlife resources are categorically excluded as long as they do not involve, among other things, "introduction of organisms not indigenous to the affected ecosystem" (516 DM 8.5 B(1)).

## **Next Steps**

The establishment of the categorical exclusion is open to public comment. Following review of the comments, the Service will submit the final categorical exclusion to CEQ, which will review it and our responses to public comments for conformity with NEPA and make a recommendation regarding approval of the categorical exclusion. If the categorical exclusion is approved by the Department, the

Service will review each subsequent listing rule for the DOI-established extraordinary circumstances that would necessitate the preparation of an EA or an EIS. The Administrative Procedure Act rulemaking procedures and the review of extraordinary circumstances both ensure that the decision to apply the categorical exclusion as part of the NEPA environmental review is informed by input from other Federal agencies, other governmental and Tribal entities, and the public.

### **Public Comments**

Any comments to be considered on this proposed addition to the list of categorical exclusions in the Departmental Manual must be received by the date listed in **DATES** at the location listed in **ADDRESSES**. Comments received after that date will be considered only to the extent practicable. Comments, including names and addresses of respondents, will be posted at <http://www.fws.gov/injuriouswildlife>. Before including your address, telephone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

### **Proposed Text for the Departmental Manual**

The text we propose to add to 516 DM (see **ADDRESSES**) is set forth below:

#### **Part 516: National Environmental Policy Act of 1969**



**Chapter 8: Managing the NEPA Process—U.S. Fish and Wildlife Service**

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**8.5 Categorical Exclusions.**

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**C. Permit and Regulatory Functions.**

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(9) The adding of species to the list of injurious wildlife regulated under 50 CFR subchapter B, part 16, which prohibits the importation into the United States and interstate transportation of wildlife found to be injurious.

**Dated:** May 31, 2013

Willie R. Taylor

**Director, Office of Environmental Policy and Compliance.**

**Billing Code 4310-55**

